

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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K&S NORTH TITUSVILLE, LLC,

Plaintiff,

-against-

JAMES NOTEWARE,

Defendant.
-----X

09 CIV 9667 (DAB)

**STIPULATION AND
CONSENT ORDER
FOR THE ENTRY OF
A FINAL JUDGMENT**

WHEREAS, K&S North Titusville, LLC (the "Plaintiff"), is a New York Registered Limited Company which maintains its principal office at 7001 Brush Hollow Road, Westbury, New York; and

WHEREAS, defendant James Noteware ("Noteware") is a resident of the State of Texas, residing at 5402 Fieldwood, Houston, Texas; and

WHEREAS, this action was commenced by the filing of a summons and complaint, dated November 12, 2009 (the "Complaint"), with the Clerk of the Court; and

WHEREAS, Noteware was served with the summons and complaint in this action on December 2, 2009; and

WHEREAS, pursuant to a written "Financial Support Agreement," and related documents, including a "Credit Advance Agreement," Plaintiff agreed to obtain a letter of credit in favor of Compass Bank (the "Letter of Credit") for the benefit of non-party Noteware Mesa Verdi Investment, LLC ("NMVI"); and

WHEREAS, in consideration for Plaintiff's agreement to obtain the Letter of Credit, NMVI agreed, in the document titled "Credit Advance Agreement," among other things, to pay the plaintiff: (a) any amount drawn under the Letter Of Credit; (b) an availability fee equal to

\$15,000 per month (the "Availability Fee"); (c) \$11,000 annually to cover the cost of the financial institution issuing the Letter of Credit (the "Annual Fee"); and (d) the legal costs plaintiff incurred in connection with the preparation of the Financial Support Agreement and related documents; and

WHEREAS, in consideration for, among other things, the Plaintiff's agreement to obtain the Letter of Credit, Noteware, the owner of NMVI, executed a written guaranty (the "Guaranty") pursuant to which Noteware "irrevocably and unconditionally, guarantee[d] to [plaintiff] the prompt payment when due, whether at stated maturity, by acceleration or otherwise, of all obligations and liabilities of [NMVI]" under the Credit Advance Agreement; and

WHEREAS, Plaintiff obtained the Letter of Credit which was issued in favor of Compass Bank in the sum of \$1,100,000; and

WHEREAS, on or about December 23, 2008, Compass Bank drew down the Letter of Credit in the sum of \$1,100,000; and

WHEREAS, pursuant to the Credit Advance Agreement and the Guaranty, Noteware is obligated to pay to Plaintiff the sum of \$1,100,000 which was drawn by Compass Bank; and

WHEREAS, Noteware has not paid Plaintiff the sum of \$1,100,000 which is due and owing; and

WHEREAS, Noteware has not made other payments due pursuant to the Credit Advance Agreement and the Guaranty, including the Availability Fee and the Annual Fee, in the amount of \$365,000; and

WHEREAS, pursuant to the Credit Advance Agreement, upon the occurrence of an Event of Default "the unpaid balance of the Obligations from time to time outstanding shall bear

interest at the per annum rate (the "Default Rate") equal to eighteen percent (18%); and

WHEREAS, both the Credit Advance Agreement and the Guaranty contain provisions which require Noteware to pay to Plaintiff the costs and attorney's fees Plaintiff has incurred in collecting the amounts due from Noteware; and

WHEREAS, on June 4, 2009 a written demand was issued to Noteware for payment of the amounts due to the Plaintiff; and

WHEREAS, Noteware has not paid Plaintiff the amounts due.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Plaintiff and James Noteware, that

1. Noteware acknowledges and agrees that: (a) he was properly served with the summons and complaint in this action; (b) he is subject to jurisdiction in this court; and (c) he waives, to the extent they exist, any objections to jurisdiction, whether based on service of the summons and complaint, personal jurisdiction, or otherwise.

2. Noteware consents to the exercise of jurisdiction over him by this Court in this action.

3. Noteware acknowledges and agrees that the factual allegations contained in the Complaint are true and correct and that each and every one of the WHEREAS clauses stated above is true and correct.

4. Noteware acknowledges and agrees that he does not have any defenses against the claims which have been asserted against him in this action.

5. Noteware understands that he has the right to serve an answer to the complaint in this action and to contest the Plaintiff's allegations and he knowingly and intentionally waives his right to do so.

6. Noteware represents and warrants that: (a) he has been represented in connection with this matter by David M. Smith, Esq., 2777 Allen Parkway, Suite 1000, Houston, Texas, who is an attorney duly admitted to practice law in the State of Texas and who is counsel chosen by Noteware; and (b) that Mr. Smith is not appearing for Noteware in this action solely because Mr. Smith is not admitted to practice law in the State of New York or in the United States District Court for the Southern District of New York.

7. Noteware acknowledges and agrees that he is currently indebted to the Plaintiff for the amounts demanded in the Complaint, in the sum of: (x) \$1,365,000, plus interest at the rate of 18% from December 31, 2008; and (y) attorneys fees and costs of collection in the amount of \$ 4,000.00.

8. Noteware hereby consents to the entry of a judgment against him, in favor of the Plaintiff, in the sum of (a) \$1,365,000, plus interest at the rate of 18% from December 31, 2008 to the date of entry of judgment, plus (b) attorney's fees and costs of collection in the amount of \$ 4,000.00.

9. Noteware and the Plaintiff respectfully request that the Court "so order" this stipulation and take such other and further actions as are necessary and appropriate so that a final judgment may be entered against Noteware, and in favor of the Plaintiff, for the relief demanded in the Complaint reflecting the amounts set forth in, and consistent with, this Stipulation and Consent Order for the Entry of a Final Judgment.

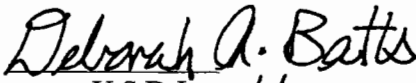
DAVID BOLTON, P.C.

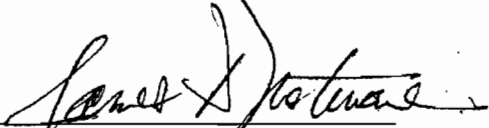
By: 

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Attorney for Plaintiff

So Ordered:


U.S.D.J. 3/1/10


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Defendant pro se